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CORPORATE RESPONSIBILITY FOR CRIME.

When two or more persons agree to act together in association for any purpose, they think of the association as something different from themselves, and they think of the acts done in the name and on behalf of the association as acts of the association considered as a separate individual, rather than as the acts of themselves as joint parties in interest. This is the normal mode of thought, not only of trained lawyers, but of mankind in general. Consistently with this, persons agreeing to act in association describe their act of coming together as that of forming an association, and these words "forming an association" appropriately express the idea that they have created something having a capacity for rights and liabilities separate from themselves. Again, they give the association a name, which is another appropriate means of personifying the association, that is, of expressing the idea of the individuality of the association as a separate existence or entity. This being the normal conception of a group of persons acting in association, it is obvious that, in general, you can best give effect to the intentions of these persons and so decide justly questions involving the rights and liabilities growing out of associate action, if you treat the association as if it were an individual or legal person having the same capacity for rights and liabilities as a natural person possesses. And, in general, you can't give effect to these intentions and justly decide such questions unless you do so treat it. The courts, however, in this instance, as in some others, have been arbitrarily restrained from doing justice in their own simple way. According to a principle of the Anglo-American law settled at a very early day in its history, courts cannot recognize the separate individuality of an association to the fullest extent, unless they are expressly permitted to do so—in England by the King or by Parliament, in this country by Congress, or by a legislature of a

State or Territory. The association which the courts are thus permitted to recognize as an individual is called in this country a corporation. It is distinguished from a group of individuals which the law does not conceive of as a unit, such as a partnership, in one vital respect: while the legal rights and liabilities of a partnership are in legal contemplation the rights and liabilities of the individual partners as joint parties in interest, the legal rights and liabilities of a corporation are those of the corporation itself and not of the individual members. Hence, in suits involving the legal rights of property, real and personal, and the legal rights and liabilities as between the corporation and third persons growing out of contracts and torts, it is the corporation, considered as a person, which is the proper party to sue and to be sued; and the members of the corporation are not regarded as the real parties in interest or as the *cestuis que trust* or principals for whom the corporation acted as trustee or agent.¹ But it is to be noted that while this conception of the legal relations is sound, just and true in theory, in point of substance the members of the corporation are the real parties in interest or the real principals in the transaction;¹ and, as is hereinafter shown, if justice requires that their rights and liabilities as individuals be considered, the doctrine of corporate entity does not stand in the way. In this respect, the law of corporations presents an interesting contrast to the law of partnerships. In suits at law between a partnership and third persons, the rights

¹Salomon v. Salomon & Co., L. R. [1897] A. C. 22, per Lord Herschell, at p. 43: "In a popular sense, a company may in every case be said to carry on business for and on behalf of its shareholders; but this certainly does not in point of law constitute the relation of principal and agent between them or render the shareholders liable to indemnify the company against the debts which it incurs."

In Button v. Hoffman (1884) 61 Wis. 20, in which the entity theory was consistently applied, the court said, at p. 24: "In Bennett v. Am. Art Union, 5 Sandf. Super. Ct. 614, it was held that, 'as a general rule, the whole title, legal and equitable (to its property), is vested in the corporation itself.'" With this compare the statement in the same opinion at p. 22: "The corporation is the trustee for the management of the property, and the stockholders are the mere *cestuis que trust*."

In Gallagher v. Germania Brewing Co. (1893) 53 Minn. 214, another case in which the entity theory was consistently applied, the court said, at p. 218: "The facts of the present case appeal to a natural sense of justice, for while, by fiction of law, a corporation is a distinct entity, yet in reality it is an association of persons who are in fact the beneficial owners of all the corporate property." Cf. Home Fire Insurance Co. v. Barber (1903) 67 Neb. 644, per Pound, C., at p. 660: "We must not suffer ourselves to be deceived by speaking of causes of action of the corporation in this connection, since causes of action of this character belong to the corporation for the benefit and in the interest of its stockholders." See also Wormser, Piercing the Veil of Corporate Entity, 12 Columbia Law Rev. 496.

and liabilities are those of the individual partners and not of the co-partnership; but a court of equity sometimes finds it necessary for the purpose of giving effect to the mercantile idea of a partnership and of doing justice, to recognize the partnership as an entity, and grants relief accordingly. Conversely, in suits at law between a corporation and third persons, as we have seen, the rights and liabilities are those of the entity and not of the individual members; but, as already stated, when it is necessary for the purpose of giving effect to the intention of the parties and of doing justice to recognize the individual members, courts can and must recognize them. In other words, a conception formed and applied for the purpose of furthering the intentions of the parties and of promoting justice should never be applied so as to defeat the intentions and prevent justice.² But, if the application of such conception does not conflict with justice, then a reasonable logical consistency and a reasonable definiteness, certainty and simplicity in the law require that it should be applied, although in a given case it might also be possible to do justice without it.³

The theory of corporate entity thus conceived is not a fiction in the sense of a supposition contrary to and having no relation to fact. This kind of fiction, which may properly be called an arbitrary or artificial fiction, is one with which readers of Sir Henry Maine's *Ancient Law* are familiar. And there are many such fictions in the law—such as the fiction of a lease in the old suit of ejectment, the fiction that all of the stockholders of a corporation are residents of the State where it was incorporated, the fiction that a person who has not been heard of for a certain number of years is dead, the fiction of a lost grant, and the like. But the word "fiction" may also be used in the sense of a mental conception in harmony with the nature of things; and when such mental conception or fiction is formed and applied for the purpose of giving effect to the real intention of individuals and thereby promoting justice, it is not correctly defined, in accordance with one of the definitions of "fiction" in the *Century Dictionary*, as "the act of feigning, inventing or imagining, a *false* deduction or conclusion." The act of imagining a certain relation for the purpose of giving effect to the real intention of the parties involves something very real and true, rather than false. There are many instances

²*Goodwin v. N. Y., N. H. & H. R. R. (C. C. 1903) 124 Fed. 358, 370-371.*

³*Canfield & Wormser, Cases on Corporations, 3 n. 1; Ibid. 7, n. 2; Ibid. 10, n. 3.*

in our law of this nobler and worthier kind of fiction,—which may be called a rational fiction in contrast to the arbitrary or artificial fiction above referred to,—such as implied conditions in contracts, the doctrine of relation in the law of agency, and the doctrine of relation in the law of executors. The doctrine of corporate entity is the same kind of fiction, and if properly and rationally applied, serves well the purposes of justice. In fact, it is just as much needed now as it ever was, and the demand for its rejection as an antiquated, outworn and crude doctrine of the common law is based upon a misconception of its nature.

It has sometimes been assumed that this entity theory obstructs the administration of the criminal law, and on that account should be modified or rejected altogether. This is based upon the curiously erroneous notion that the formation of a corporation involves not merely the creation of a legal person and the merging of the individual members in the corporate group, but also the extinction of the members of the corporate group as individuals with capacity for rights and liabilities of their own. This, however, is not at all the legal conception of the matter. A, B and C, by incorporating themselves for the purpose of committing crime, while they may succeed in creating a legal person liable to the penalties of the law, cannot themselves escape liability for their own individual acts.⁴ There has never been any doubt among lawyers on this point; and, therefore, it is quite superfluous and useless to provide, as it is provided in the proposed legislation relating to unlawful restraints or monopolies, that when a corporation shall be guilty of a violation of law, "the offense shall be deemed to be also that of the individuals, directors, or other officers or employees of such corporation ordering or doing the prohibited acts." There has never been any doubt among lawyers that a crime committed on behalf of an association, corporate or incorporate, must in fact have been committed by individuals, and that, therefore, guilt is always personal. The only doubt, as we shall see, has been whether it might also be considered corporate as well as personal.

The difficulty of enforcing personal responsibility for crime has been simply one of proof. It has not been increased by the recognition of the corporate entity. The same difficulty exists in the case of a partnership and with respect to any crime committed by one or more persons acting in combination or conspiracy. The man "higher up" is hard to reach, whether he is the principal of a

⁴ 4 Columbia Law Rev. 315, n. 1.

firm availing himself of the agency of guilty partners, the guilty president or director of a corporation, the guilty boss of an unincorporated political machine or labor union, or the guilty head or beneficiary of a corrupt "system." The difficulty of reaching him is not on account of any legal conceptions or doctrines of the common law, but solely on account of the difficulty of producing legal evidence to connect the really guilty party with a crime committed through the instrumentality of his agents or servants.

A question upon which there is more room for difference of opinion is to what extent may the corporation itself be liable, in addition to the liability of the individual members of the corporation who have participated in the crime?

As late as the close of the eighteenth century, it was thought that a corporation could not be indicted for any offense,⁵ but by the middle of the nineteenth century this notion had been thoroughly outgrown.

In *Queen v. Great North of England Ry.*,⁶ which was the case of an indictment of a railway company for a nuisance alleged to have been caused by obstructing a highway, Lord Denman, C. J., said:

"We are told that this remedy is not required, because the individuals who concur in voting the order, or in executing the work, may be made answerable for it by criminal proceedings. Of this there is no doubt. But the public knows nothing of the former; and the latter, if they can be identified, are commonly persons of the lowest rank, wholly incompetent to make any reparation for the injury. There can be no effectual means for deterring from an oppressive exercise of power for the purpose of gain, except the remedy by an indictment against those who truly commit it, that is, the corporation, acting by its majority; and there is no principle which places them beyond the reach of the law for such proceedings."

⁵1 Bl. Comm. (1765) Book I, ch. 18, p. 476: "A corporation cannot commit treason, or felony, or other crime, in its corporate capacity; though its members may in their distinct individual capacities." Anonymous (1701) 12 Mod. *559, per Holt, C. J.: "A corporation is not indictable, but the particular members of it are." See also Hobbes, *Leviathan*, ch. 22; *Abbot of St. Bennets v. Mayor of Norwich* (1482) Y. B. 21 Edw. IV. 7, 13. In *Pollock's First Book on Jurisprudence* (3rd. ed.) at p. 123, we find the following surprising statement: "A corporation cannot commit crimes, for it cannot authorize them. If the members or representatives of a corporation affected to authorize a criminal act in its name, they would merely make themselves liable as individuals." *McDaniel v. Gates City Gas-Light Co.* (1887) 79 Ga. 58, 61: "We do not understand that in this State a corporation can be indicted for an offense." But this is no longer law in Georgia.

⁶(1846) 9 Q. B. 315.

It will be noted that the only question considered open for serious discussion in this case was whether the corporation itself could be made liable, there being no doubt at all as to the liability of the individual members. In accord with this decision, corporations have been held indictable for a great variety of crimes, such as criminal nuisance,⁷ sabbath-breaking,⁸ criminal libel,⁹ obstructing a highway,¹⁰ keeping a disorderly house,¹¹ usury,¹² violating the eight-hour law,¹³ taking salmon unlawfully,¹⁴ failure to supply drinking water on trains,¹⁵ manslaughter resulting from negligence in failing to provide proper life-preservers on a steamboat,¹⁶ unlawfully advertising to practice medicine,¹⁷ and granting rebates in violation of the Elkins Law.¹⁸ In all these cases, the offenses for which the corporations were indicted consisted in doing the things prohibited, and neither knowledge nor intent, it seems, was an essential ingredient. While guilty knowledge or guilty intent is, in general, an essential element in crimes at common law, this is not true of many statutory crimes, it being competent for the legislature, in the exercise of its police power, absolutely to prohibit acts deemed detrimental to the public welfare, without regard to the knowledge or intent of the person doing the acts or responsible for them.¹⁹ If the policy of the law requires the absolute prohibition of any acts, it is a legitimate means of carrying such

⁷State v. Morris, etc. R. R. (1852) 23 N. J. L. 360.

⁸State v. Baltimore & Ohio R. R. (1879) 15 W. Va. 362.

⁹State v. Atchison (Tenn. 1879) 3 Lea, 729; People v. Star Co. (N. Y. 1909) 135 App. Div. 517.

¹⁰State v. Baltimore, etc. R. R. (1889) 120 Ind. 298, 22 N. E. 307.

¹¹State v. Passaic County Agr. Soc. (1892) 54 N. J. L. 260, 23 Atl. 680.

¹²State v. First National Bank (1892) 2 S. Dak. 568, 51 N. W. 587.

¹³United States v. Kelso Co. (D. C. 1898) 86 Fed. 304.

¹⁴United States v. Alaska Packers' Ass'n. (1901) 1 Alaska, 217.

¹⁵Southern Ry. v. State (1906) 125 Ga. 287, 54 S. E. 160.

¹⁶United States v. Van Schaick (C. C. 1904) 134 Fed. 592; cf. People v. Rochester Ry. (1909) 195 N. Y. 102, 88 N. E. 22.

¹⁷People v. Woodbury Dermatological Inst. (1908) 192 N. Y. 454, 85 N. E. 697.

¹⁸N. Y. Central R. R. v. United States (1909) 212 U. S. 481. In this case the question was raised, but not answered, as to whether the provisions of the Elkins Law would be applicable to individuals; but the court seemed to be of the opinion that it might be valid as against corporations although not as against individuals. It would seem to the writer that the Elkins Law contained an absolute prohibition and that individuals as well as corporations could be indicted for violations of it by their agents.

¹⁹United States v. Bayaud (C. C. 1883) 16 Fed. 376; Commonwealth v. Weiss (1891) 139 Pa. St. 247; People v. Kibler (1887) 106 N. Y. 321.

policy into effect to make any person or group of persons, for whom, or under whose direction or control, such acts have been done, absolutely responsible for them. Therefore, a person may be indicted not only for all acts which he has himself done, but also for all acts done under his direction or control. As a principal may thus be indicted for acts of his agent, or the members of a partnership for the acts of any one of the partners, there is no objection in theory to indicting a corporation for such acts done by its officers, directors or agents.²⁰

It is true that in some of the cases above referred to the courts have expressed the opinion that corporations may also be held liable for crimes involving guilty knowledge or criminal intent, but these opinions were expressed *obiter*, and the point was really not involved in the decision. For instance, in *United States v. Alaska Packers' Ass'n.*,²¹ the court said: "A corporation has the same capabilities of criminal intent and of act—in other words, of crime—as an individual man sustaining to the thing the like relations." But the statute which had been violated in that case contained an absolute prohibition without saying anything about knowledge or intent. In *State v. Passaic County Agr. Society*,²² the court said: "That malice and evil intent may be imputed to corporations has been repeatedly adjudged." But the court expressly decided that this question was not necessarily involved in the discussion of the case, and further held that "the habitual indulgence of the vicious practices on the premises of the defendant corporation stamps it as a disorderly house, without regard to the intent which permitted the disorder." In *People v. Star Co.*,²³ it was held that a corporation may be indicted for a criminal libel, "the evil intent of its agents to write and print the libel being attributable to it." But every editor or proprietor of a newspaper, whether incorporated or not, was made chargeable by the express terms of the

²⁰*State v. Morris, etc. R. R.* (1852) 23 N. J. L. 360, 370, per Green, C. J.: "Nor can they [corporations] be liable for any crime of which a corrupt intent or *malus animus* is an essential ingredient. But the creation of a mere nuisance involves no such element. It is totally immaterial whether the person erecting the nuisance does it ignorantly or by design, with a good intent or an evil intent; and there is no reason why for such an offense a corporation should not be indicted." *State v. Baltimore, etc. R. R.* (1889) 120 Ind. 298, 300: "It is argued that the indictment is bad because it fails to charge a criminal intention. All that is necessary to a good indictment for obstructing a public highway is to allege such facts as meet the requirements of the statute."

²¹(1901) 1 Alaska, 217, 220.

²²(1892) 54 N. J. L. 260.

²³(N. Y. 1909) 135 App. Div. 517.

statute in question with the publication of libelous matter. On the other hand, in other of the cases, the courts have expressed *obiter* exactly the opposite opinion; namely, that corporations cannot be indicted for any crime, of which a corrupt intent or *malus animus* is an essential ingredient.²⁴

There are, however, a few decisions which apparently hold that a corporation may be indicted for a crime involving as an essential element guilty knowledge or criminal intent, as, for instance, a conspiracy in restraint of trade,²⁵ unlawfully and knowingly obstructing a public road,²⁶ knowingly depositing in the United States mails certain unmailable matter,²⁷ wilfully and unlawfully destroying property,²⁸ and larceny.²⁹

In *United States v. MacAndrews & Forbes Co.*,³⁰ above referred to, Hough, District Judge, held:

"It seems to me as easy and logical to ascribe to a corporation an evil mind as it is to impute to it a sense of contractual obligation. There is the obvious physical difficulty in rendering a corporation amenable to corporal punishment, but there is no more intellectual difficulty in considering it capable of homicide or larceny than in thinking of it as devising a plan to obtain usurious interest. The limitation of power does not depend upon the difficulty of imputing evil intent, but upon the impossibility of visiting upon corporations the punishments usually prescribed for greater crimes. The same law that creates the corporation may create the crime, and to assert that the Legislature cannot punish its own creature because it cannot make a creature capable of violating the law, does not, in my opinion, bear discussion."

²⁴*Commonwealth v. Proprietors of New Bedford Bridge* (Mass. 1854) 2 Gray, 339; *State v. Morris, etc. R. R.* (1852) 23 N. J. L. 360; *United States v. Kelso Co.* (D. C. 1898) 86 Fed. 304. Sometimes decisions are relied upon which do not involve the question of liability to indictment for crime; for instance, *Telegram Newspaper Co. v. Commonwealth* (1899) 172 Mass. 294, was not the case of an indictment for crime but a proceeding by the court to punish summarily for contempt and the court said: "The jurisdiction and power of the court do not depend upon the question whether the offense might or might not be punished by indictment. * * * As regards the question of whether a contempt has or has not been committed, it does not depend upon the intention of the party but upon the act he has done." In accord with this are *Mayor v. Staten Island Ferry Co.* (1876) 64 N. Y. 622, and *Franklin Union No. 4 v. People* (1905) 220 Ill. 355, both proceedings to punish for contempt.

²⁵*United States v. MacAndrews & Forbes Co.* (C. C. 1906) 149 Fed. 823; *State v. Eastern Coal Co.* (1908) 29 R. I. 254.

²⁶*State v. White* (1902) 96 Mo. App. 34, 69 S. W. 684.

²⁷*United States v. N. Y. Herald Co.* (C. C. 1907) 159 Fed. 296.

²⁸*State v. Rowland Lumber Co.* (1910) 153 N. C. 610.

²⁹*People v. Tyson & Co.*, 50 N. Y. L. J., Jan. 13, 1914.

³⁰(C. C. 1906) 149 Fed. 823, 836.

The question upon which the learned judge had to pass, it is submitted, was not whether the legislature *could* punish a corporation which it had itself created, but whether it *had done so*. It would seem, there could be no doubt as to how this question should be answered in this particular case, since the corporation before the court had been created by a state legislature and the statute under which it was indicted was a federal statute. Granting, however, that a legislature which creates a corporation *may* create it subject to any provisions of the criminal law, it must be shown in each instance that it *has* been made subject to the provisions of the criminal statute in question before it can be held indictable thereunder. A corporation, as we have seen, must be treated, in general, *as if it were* a person, but this is not to say that it is in fact a living person, possessing all the attributes of such a person. It is, therefore, not only not easy or logical to ascribe to a corporation an evil mind, but it is absolutely impossible to do so, except, of course, by a purely arbitrary and irrational fiction. There is a very broad and fundamental difference between ascribing to a corporation an evil criminal intent and imputing to it a contractual capacity. The difference is as broad and fundamental as that between an artificial and a rational fiction. Artificial fictions have served a useful purpose in the development of the law, but they now seem unnecessary and rather childish, and as the world grows older and wiser it may put them away as other childish things; but a rational fiction is still a necessity, and will continue to be a necessity so long as there is need of reason and justice in the administration of law.

If the policy of the law required that a person should be bound only by contracts which he personally made, then it would be both illogical and impossible to ascribe to a corporation a contractual capacity, and it would be just as impossible for a corporation to be bound by contracts, as it would be for an individual principal. When a statute prescribes guilty knowledge or guilty intent as an essential element of the crime, it is the policy of the law to punish only those who are personally guilty; to punish the innocent stockholders of a corporation would be contrary to such policy and as unjust as it would be to punish the innocent members of a copartnership, or joint stock association. A judgment in a civil suit is properly enforced against a corporation and its property and not against the individual stockholders or their individual property, since that gives effect to the intention of the parties and promotes

justice. But even in a civil case, there are instances where a court should recognize the fact that a judgment against the property of a corporation is substantially a judgment against the property of the individual members of it. For example, if the same persons become incorporated under the laws of two or more States and in each State there is absolute identity of membership and assets, we have, in point of substance, only one incorporated group; but in legal theory the corporation is regarded in each State as a corporation of that State, and a judgment against the corporation in each State is a judgment against it as a corporation of that State. But a judgment on the merits for or against the corporation in any one State should be a bar to an action by or against it in another State as a corporation of the latter State, since, in point of substance, the judgment is one which affects the same persons and the same property.³¹ Similarly, a court should not shut its eyes to the fact that a fine which is imposed upon a corporation, although it is collectible only out of the property of a corporation, is substantially, although not in legal contemplation, a judgment against its innocent stockholders. In *Hale v. Henkel*,³² Mr. Justice Brown, delivering the opinion of the majority of the court, said:

"A corporation is, after all, but an association of individuals under an assumed name and with a distinct legal entity. In organizing itself as a collective body, it waives no constitutional immunities appropriate to such body."

It might also have been said that the individual members of the corporation, in organizing themselves into a collective body, do not waive any of their constitutional immunities, and are entitled to the protection of all the principles of the common law securing the liberty of the individual. By becoming a member of a corporation, an individual does not thereby acquire guilty knowledge and become a party to the criminal acts of the corporation. If the law prescribes that penalties shall be imposed only upon those who have guilty knowledge and guilty intent, the innocent members of the corporation cannot be amenable to those penalties; it would be contrary to the policy of the law and contrary to justice to impose the penalties indirectly upon the innocent members of a corporation by imposing the penalties upon the corporation itself.

³¹See *Goodwin v. N. Y., N. H. & H. R. R. (C. C. 1903) 124 Fed. 358, 370-371.*

³²(1906) 201 U. S. 43, 76.

At the present time, there are current two strangely conflicting conceptions or theories with respect to the nature of corporations, and, most curiously, these two conflicting conceptions or theories may apparently abide side by side in the same brain in peace and harmony. According to one theory, the doctrine of the corporate entity is an artificial fiction and should be, in general, disregarded, if not abandoned altogether.³³ According to the other, a corporate entity is something very real, possessing a mind and character of its own. Hence the persistent notion that incompetent and untrust-

³³See Taylor, *Corporations*, Preface to Third Edition: "The rule or fiction that a corporation is a legal person * * * is dead as a principle because legal propositions are no longer deduced from it, nor is it in logical connection with the great mass of legal rules which have been called forth by controversies relating to railroad and other business corporations." See also Morawetz, *Corporations*, Preface to Second Edition, and § 1, p. 3: "However, it is essential to a clear understanding of many important branches of the law of corporations to bear in mind distinctly, that the existence of a corporation independently of its shareholders is a fiction; and that the rights and duties of an incorporated association are in reality the rights and duties of the persons who compose it, and not of an imaginary being." In this passage the learned author fails to distinguish between an arbitrary or artificial fiction and a rational one, and the legal conception of a corporation is further confused by the statement as to the obligations of the corporation being "in reality" those of its members. Pain and color are "real" and not fictions, although they have no objective existence, and the corporate entity or juristic person and its rights and obligations are "real," although they exist only in the brain of man. If, in the eye of the law, the rights and duties of a corporation were "in reality" the rights and duties of the persons who compose it, then the validity of corporate obligations would depend upon the contractual capacity of its members. It would follow that, if all the members of the corporation consisted of married women, subject to all their common law disabilities or those still existing in some jurisdictions, see *Christopher v. Norvell* (1906) 201 U. S. 216, the corporation could make no binding contracts, or if all the members of the corporation should die between the time of making an offer and its acceptance, no contract would come into existence. See also Articles by Prof. Hohfeld, 9 *Columbia Law Rev.* 288, and 10 *Id.* 296; also Articles on Corporate Personality by Mr. Machen, 24 *Harvard Law Rev.* 253, and 24 *Id.* 347.

Cases are sometimes referred to as involving a repudiation of the entity theory, which, in fact, are in entire accord with it; among others, the *Sugar Trust Case* (1890) 121 N. Y. 582. The actual decision in this case in no way conflicts with the entity theory, and the court began its opinion with a very emphatic recognition of it, as follows: "The judgment sought against the defendant is one of corporate death. The State, which created, asks us to destroy; and the penalty invoked represents the extreme rigor of the law. Its infliction must rest upon grave cause, and be warranted by material misconduct. The life of a corporation is indeed less than that of the humblest citizen, and yet it envelopes great accumulations of property, moves and carries in large volume the business and enterprise of the people, and may not be destroyed without clear and abundant reason. That would be true even if the legislature should debate the destruction of the corporate life by a repeal of the corporate charter; but is beyond dispute where the State summons the offender before its judicial tribunals, and submits its complaint to their judgment and review."

worthy individuals, as soon as they become representatives of the sovereign power, acquire a capacity and virtue superior to that which they possessed as individuals. Hence the persistent notion that corporations which have sinned in the past are proper subjects for the wrath and vengeance of the people and are justly deserving of punishment, although their present stockholders and officers may have been in no way connected with their previous misdeeds. Hence the persistent notion that corporations, as such, may be punished without injuring the stockholders, although, it is entirely obvious that punishment inflicted upon a corporation is punishment inflicted upon all the living men, women and children who are the substantial owners of its property, and alike upon the just and unjust, the innocent and the guilty. Hence the twentieth century notion that a corporation may be guilty of a crime involving a criminal state of mind, which obviously a corporation does not possess.

But, while corporations are not properly indictable for crimes involving a criminal state of mind, it may be conceded that it is competent for the legislature, if the interests of the public seem to require it, to eliminate the element of criminal intent so as to make the corporation liable; as, for instance, for misappropriation of property. In other words, the legislature might provide that a corporation should be absolutely liable criminally for the misappropriation of any property entrusted to it, without regard to knowledge or intent; but unless the legislature has made it clear that the element of criminal intent is eliminated, the corporation is not indictable. The mere fact that it is provided in the constitution or laws of any State that a corporation is to be regarded as a person, with the right to sue and the liability to be sued as such, is not sufficient to make the corporation indictable for crimes involving criminal intent. Nor is any provision of law similar to the provision of § 1932 of the Penal Law of New York sufficient to accomplish such a result. That section provides:

"In all cases where a corporation is convicted of an offense for the commission of which a natural person would be punishable with imprisonment, as for a felony, such corporation is punishable by a fine of not more than five thousand dollars."

This provision, it is to be noted, does not declare that a corporation is indictable for all offenses for which a natural person may be indicted. It simply declares that when a corporation is convicted of an offense, the punishment shall be by fine instead of

imprisonment. In other words, the object of this statutory provision is to prescribe a specific form of penalty and not to give a definition of crime for which corporations may be held accountable. A corporation must first be convicted before this section of the penal law is applicable; and whether or not the corporation may be convicted, depends upon the general principles of law heretofore discussed and not upon the terms of this particular provision. Our final conclusion, therefore, is that, notwithstanding this or similar statutory provisions, a corporation, according to sound theory and the general principles of the law of corporations, is not indictable for any crimes except those for which if committed on behalf of or under the general direction of an individual or partnership, such individual or a member of such partnership, although innocent, would be indictable.

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